

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8084  
Table of Allotments,  
FM Broadcast Stations.  
(Camas, Washington and Seaside, Oregon)

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: February 18, 1993; Released: March 17, 1993

By the Chief, Allocations Branch:

1. At the request of Pacific Northwest Broadcasting Corporation, ("petitioner"), permittee of Station KMUZ-FM, the Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 6823 (1992), proposing the substitution of Channel 234C2 for Channel 234C3 at Camas, Washington, and the modification of Station KMUZ-FM's construction permit accordingly.<sup>1</sup> In order to accommodate the upgrade, petitioner also requested the substitution of Channel 235A for Channel 234A at Seaside, Oregon, and the modification of Station KOEM(FM)'s construction permit accordingly.<sup>2</sup> Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. In response to the *Order to Show Cause*, Monte Corporation, permittee of Station KOEM(FM), Channel 234A, Seaside, Oregon, filed a proposal requesting the substitution of Channel 251A in lieu of proposed Channel 235A at Seaside and the modification of its construction permit accordingly. No other comments were received.

2. In its proposal, Monte claims that the substitution of Channel 251A in lieu of Channel 235A at Seaside would allow Station KOEM(FM) an opportunity to upgrade "in the near future." Monte notes that an application for Station KING-FM, Channel 251C, Seattle, Washington, to modify its construction permit site has been granted.<sup>3</sup> Monte asserts that the change of Station KING-FM's transmitter site will permit a future upgrade for Station KOEM(FM) at Seaside. Monte states that the substitution of Channel 251A would require that Station KOEM(FM) change its transmitter site. Therefore, Monte argues that

although petitioner acknowledges its obligation to reimburse Monte for reasonable costs incurred to change its frequency, petitioner should also be obligated to reimburse Monte for costs incurred to relocate its transmitter site, citing to *Milan, et al. Georgia*, 6 FCC Rcd 5793 (1991) and *Circleville, Ohio*, 8 FCC 2d 159 (1967). Accordingly, Monte contends that since the substitution of Channel 251A at Seaside would permit petitioner to accomplish its upgrade, as well as provide Station KOEM(FM) an opportunity for future expansion, the Commission should order the petitioner to reimburse Monte for costs to relocate its transmitter site. Monte indicates its willingness to negotiate in good faith with petitioner to determine reimbursement for reasonable expenses.

3. In its comments, petitioner does not object to Station KOEM(FM)'s request for the substitution of Channel 251A in lieu of Channel 235A at Seaside. However, petitioner contends that if, pursuant to Monte's request, the Commission allots a Class A channel that because of spacing requirements necessitates a change in Station KOEM(FM)'s construction permit site, petitioner is not obligated to reimburse Monte for any expenses incurred in changing channels or relocating its transmitter site. Petitioner asserts that Monte's reliance on *Milan* and *Circleville, supra*, is misplaced. Petitioner argues it would not have been able to propose its upgrade at Camas if the proposed substitution of Channel 235A for Channel 234A at Seaside necessitated that Station KOEM(FM) involuntarily change its transmitter site, citing *Claremore, Oklahoma, et al.*, 3 FCC Rcd 4037 (1988). Petitioner reiterates its willingness to reimburse Monte for reasonable and prudent costs incurred in changing channels "at its existing transmitter site."

4. We believe that the public interest would be served by the substitution of Channel 234C2 for Channel 234C3 at Camas, Washington, since it would enable Station KMUZ-FM to expand its coverage area. In order to accommodate the upgrade, and to accommodate Monte's request, we will substitute Channel 251A for Channel 234A at Seaside, Oregon, as requested by Monte. Our engineering analysis confirms that Channel 234C2 can be allotted to Camas, Washington, in compliance with the Commission's minimum distance separation requirements at the petitioner's specified site with a site restriction of 28.7 kilometers (17.8 miles) east of the community.<sup>4</sup> Additionally, Channel 251A can be allotted to Seaside, Oregon, with a site restriction of 10.1 kilometers (6.3 miles) south of the community.<sup>5</sup> As requested, we will also modify Stations KMUZ-FM and KOEM(FM)'s construction permits to specify operation on Channels 234C2 and 251A, respectively. Since both Camas, Washington, and Seaside, Oregon, are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained.

5. With respect to the issue of reimbursement, we will require that petitioner reimburse Monte for the reasonable costs associated with the change in frequency for Station KOEM(FM). Petitioner is not required to reimburse Monte

<sup>1</sup> We note that petitioner's application (BMPH-920831IH) to modify Station KMUZ-FM's construction permit was granted on October 23, 1992.

<sup>2</sup> As indicated in the *Notice*, petitioner stated in its petition that the construction permit (File No. BPH-880310MN) for Station KOEM(FM) has been assigned to the Monte Corporation ("Monte") and the call letters changed to KBRD(FM). However, the Commission records show that Monte's request to change the station's call letters to KBRD(FM) is still pending. The

application (File No. BAPH-911205EC) for assignment of Station KOEM(FM)'s construction permit was granted on January 15, 1992 and consummated on April 17, 1992.

<sup>3</sup> The application (File No. BPH-920707ID) to modify Station KING-FM's transmitter site was granted on November 10, 1992.

<sup>4</sup> The coordinates for channel 234C2 at Camas are North Latitude 45-32-20 and West Longitude 122-02-24.

<sup>5</sup> The coordinates for Channel 251A at Seaside are North Latitude 45-54-35 and 123-56-07.

for the costs it incurs for relocating Station KOEM(FM)'s transmitter site. See *Circleville, supra*. Although Commission policy requires reimbursement for the reasonable costs associated with the change in frequency of an existing authorization, it does not require reimbursement for the cost of relocating that station's transmitter at its own request. Accordingly, we will not order petitioner to reimburse Monte for Monte's requested change of Station KOEM(FM)'s transmitter site. Reimbursement of costs incurred by the affected station, both technical and promotional, is left to the good faith negotiation of the parties involved. Parties are expected to reach a reasonable and equitable agreement in an expeditious manner. It is not the Commission's policy to mediate, at the outset, claims to establish the amount of reimbursement. The Commission will do so only as a last resort. See, e.g., *Harold A. Jahnke*, 46 RR 2d 659 (1979), *Mayfield and Wickliff, Kentucky*, 48 RR 2d 1232 (1981).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 30, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

|                    |             |
|--------------------|-------------|
| City               | Channel No. |
| Camas, Washington, | 234C2       |
| Seaside, Oregon    | 251A        |

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Pacific Northwest Broadcasting Corporation for Station KMUZ-FM, Camas, Washington, IS MODIFIED to specify operation on Channel 234C2, in lieu of Channel 234C3, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Pacific Northwest Broadcasting Corporation, permittee of Station KMUZ-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Monte Corporation for

Station KOEM(FM), Seaside, Oregon, IS MODIFIED to specify operation on Channel 251A in lieu of Channel 234A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KOEM(FM)'s construction permit BPH-0880310MN, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-880310MN, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau